

The Honorable James L. Robart

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICROSOFT CORPORATION, a Washington  
corporation,

Plaintiff,

v.

MOTOROLA, INC., and MOTOROLA  
MOBILITY LLC, and GENERAL  
INSTRUMENT CORPORATION,

Defendants.

MOTOROLA MOBILITY LLC, and  
GENERAL INSTRUMENT CORPORATION,

Plaintiffs/Counterclaim Defendant,

v.

MICROSOFT CORPORATION,

Defendant/Counterclaim Plaintiff.

CASE NO. C10-1823-JLR

DEFENDANTS' MOTION TO FILE  
DEFENDANTS' PROPOSED FINDINGS  
OF FACT AND CONCLUSIONS OF  
LAW UNDER SEAL

**NOTE ON MOTION CALENDAR:  
Friday, October 12, 2012**

DEFENDANTS' MOTION TO FILE DEFENDANTS'  
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF  
LAW UNDER SEAL  
CASE NO. C10-1823-JLR

SUMMIT LAW GROUP PLLC  
315 FIFTH AVENUE SOUTH, SUITE 1000  
SEATTLE, WASHINGTON 98104-2682  
Telephone: (206) 676-7000  
Fax: (206) 676-7001

**I. INTRODUCTION**

Pursuant to Western District of Washington Civil Local Rule CR 5(g)(2), Defendants Motorola, Inc. (now Motorola Solutions, Inc.), Motorola Mobility, LLC, and General Instrument Corporation (collectively “Motorola”) respectfully move this Court for leave to file Defendants’ Proposed Findings of Fact and Conclusions of Law under seal.

**II. BACKGROUND**

Microsoft Corporation (“Microsoft”) and Motorola entered into a stipulated Protective Order, which was approved by the Court on July 21, 2011. (Dkt. No. 72.) This Protective Order outlines categories of material that should be maintained in confidence, along with procedures for sealing confidential material when included in documents filed with the Court. Specifically, paragraph 1 specifies that:

Confidential Business Information is information which has not been made public and which concerns or relates to the trade secrets ... amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, the disclosure of which information is likely to have the effect of causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained....

*Id.* at 1-2. This information should be marked as “CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER.” *Id.* at 2. Additionally, paragraph 6 specifies that:

(1) Confidential Business Information pertaining to licensing or other commercially sensitive financial information shall not be made available under this paragraph 6 to such designated in-house counsel; the supplier shall designate such Confidential Business Information pertaining to licensing or other commercially sensitive financial information as “[SUPPLIER’S NAME] CONFIDENTIAL FINANCIAL INFORMATION – OUTSIDE ATTORNEYS’ EYES ONLY – SUBJECT TO PROTECTIVE ORDER” and promptly provide a redacted version of such document that may be disseminated to the two in-house counsel designated under this paragraph 6....

*Id.* at 4. Finally, Paragraph 2 of the Protective Order governs the sealing of documents, and states in relevant part that:

During the pre-trial phase of this action, such information, whether submitted in writing or in oral testimony, shall be disclosed only *in camera* before the Court

1 and shall be filed only under seal, pursuant to Rule 5(g) of the Local Civil Rules  
2 of the United States District Court for the Western District of Washington.

3 *Id.* at 2.

4 Thus, the Protective Order provides that Motorola may request to seal documents by  
5 formal motion pursuant to Rule 5(g) of the Local Civil Rules of the Western District of  
6 Washington. Local Rule CR 5(g)(3) states that:

7 If a party seeks to have documents filed under seal and no prior order in the case  
8 or statute specifically permits it, the party must obtain authorization to do so by  
9 filing a motion to seal or a stipulation and proposed order requesting permission  
10 to file specific documents under seal. The court will allow parties to file entire  
11 memoranda under seal only in rare circumstances. A motion or stipulation to seal  
usually should not itself be filed under seal. A declaration or exhibit filed in  
support of the motion to seal may be filed under seal if necessary. If possible, a  
party should protect sensitive information by redacting documents rather than  
seeking to file them under seal. A motion or stipulation to seal should include an  
explanation of why redaction is not feasible.

12 Similarly, federal law recognizes that courts should protect trade secrets or other  
13 confidential commercial information by reasonable means, permitting the filing under seal of  
14 documents containing such information. *See* Fed. R. Civ. P. 26(c)(1)(G) and (H) (stating that a  
15 court may require that (1) “a trade secret or other confidential research, development, or  
16 commercial information not be revealed or be revealed only in a specified way” and (2) “the  
17 parties simultaneously file specified documents or information in sealed envelopes...”).

18 Though courts recognize a general right to inspect and copy public records and documents,  
19 including judicial records, the United States Supreme Court has stated that this right is limited.  
20 “[T]he right to inspect and copy judicial records is not absolute. Every court has supervisory  
21 power over its own records and files, and access has been denied where court files might have  
22 become a vehicle for improper purposes.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598  
23 (1978). In discussing examples of improper purposes, the Court indicated that courts are not to  
24 serve as “sources of business information that might harm a litigant’s competitive standing.” *Id.*

25 As the Ninth Circuit stated:

26 The law, however, gives district courts broad latitude to grant protective orders to  
prevent disclosure of materials for many types of information, including, but not

1 limited to, trade secrets or other confidential research, development, or  
 2 commercial information. See Fed. R. Civ. P. 26(c)(7). Rule 26(c) authorizes the  
 3 district court to issue “any order which justice requires to protect a party or  
 4 person from annoyance, embarrassment, oppression, or undue burden.” The  
 Supreme Court has interpreted this language as conferring “broad discretion on  
 the trial court to decide when a protective order is appropriate and what degree of  
 protection is required.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984).

5 *Phillips v. General Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002).

### 6 **III. THE PROTECTIVE ORDER BOTH PERMITS AND REQUIRES MOTOROLA 7 TO FILE THIS MOTION FOR LEAVE TO SEAL**

8 In accordance with the Protective Order and the above-referenced authority, Motorola  
 9 respectfully requests that Defendants’ Proposed Findings of Fact and Conclusions of Law be filed  
 10 under seal because of: (1) citation to, quotes from, and description of confidential Microsoft  
 11 internal emails; (2) citation to and descriptions of the parties’ business and licensing histories and  
 12 practices; (3) discussion of internal Microsoft documents; and (4) reference to expert reports filed  
 13 in this action by Microsoft’s and Motorola’s expert witnesses, which the parties have designated  
 14 as “MICROSOFT/MOTOROLA CONFIDENTIAL BUSINESS INFORMATION OUTSIDE  
 15 ATTORNEY’S EYES ONLY – SUBJECT TO PROTECTIVE ORDER” and “HIGHLY  
 16 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Disclosure of this information to third  
 17 parties and other party employees not covered by the protective order would have the potential to  
 18 lead to competitive harm. Because this information is contained in Defendants’ Proposed  
 19 Findings of Fact and Conclusions of Law, and in accordance with its responsibilities under the  
 20 Protective Order, Motorola has marked this document as containing “OUTSIDE ATTORNEYS’  
 21 EYES ONLY – SUBJECT TO PROTECTIVE ORDER.” In lieu of sealing all of the document,  
 22 Motorola has redacted only those portions of Defendants’ Proposed Findings of Fact and  
 23 Conclusions of Law that disclose this confidential information. Redactions were made to limit as  
 24 little information as possible, leaving the remainder available for public review.

### 25 **IV. CONCLUSION**

26 For the foregoing reasons, Motorola respectfully requests that this Court order that  
 Defendants’ Proposed Findings of Fact and Conclusions of Law be filed under seal.

1 DATED this 4th day of October, 2012.

2 Respectfully submitted,

3 SUMMIT LAW GROUP PLLC

4 By /s/ Ralph H. Palumbo

5 Ralph H. Palumbo, WSBA #04751

6 Philip S. McCune, WSBA #21081

7 Lynn M. Engel, WSBA #21934

8 *ralphp@summitlaw.com*

9 *philm@summitlaw.com*

10 *lynne@summitlaw.com*

11 By /s/ Thomas V. Miller

12 Thomas V. Miller

13 MOTOROLA MOBILITY LLC

14 600 North U.S. Highway 45

15 Libertyville, IL 60048-1286

16 (847) 523-2162

17 And by

18 Jesse J. Jenner (*pro hac vice*)

19 Steven Pepe (*pro hac vice*)

20 Stuart W. Yothers (*pro hac vice*)

21 Kevin J. Post (*pro hac vice*)

22 Ropes & Gray LLP

23 1211 Avenue of the Americas

24 New York, NY 10036-8704

25 (212) 596-9046

26 *jesse.jenner@ropesgray.com*

*steven.pepe@ropesgray.com*

*stuart.yothers@ropesgray.com*

*kevin.post@ropesgray.com*

James R. Batchelder (*pro hac vice*)

Norman H. Beamer (*pro hac vice*)

Ropes & Gray LLP

1900 University Avenue, 6<sup>th</sup> Floor

East Palo Alto, CA 94303-2284

(650) 617-4030

*james.batchelder@ropesgray.com*

*norman.beamer@ropesgray.com*

Paul M. Schoenhard (*pro hac vice*)  
Ropes & Gray LLP  
One Metro Center  
700 12<sup>th</sup> Street NW, Suite 900  
Washington, DC 20005-3948  
(202) 508-4693  
*paul.schoenhard@ropesgray.com*

***Attorneys for Motorola Solutions, Inc., Motorola  
Mobility LLC and General Instrument Corp.***

**CERTIFICATE OF SERVICE**

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Arthur W. Harrigan, Jr., Esq.  
Christopher T. Wion, Esq.  
Shane P. Cramer, Esq.  
Calfo Danielson, Harrigan, Leyh & Eakes LLP  
*arthurh@calfoharrigan.com*  
*chrisw@calfoharrigan.com*  
*shanec@calfoharrigan.com*

Richard A. Cederoth, Esq.  
Brian R. Nester, Esq.  
David T. Pritikin, Esq.  
Douglas I. Lewis, Esq.  
John W. McBride, Esq.  
David Greenfield, Esq.  
William H. Baumgartner, Jr., Esq.  
David C. Giardina, Esq.  
Carter G. Phillips, Esq.  
Constantine L. Trela, Jr., Esq.  
Ellen S. Robbins, Esq.  
Nathaniel C. Love, Esq.  
Sidley Austin LLP  
*rcederoth@sidley.com*  
*bnester@sidley.com*  
*dpritikin@sidley.com*  
*dilewis@sidley.com*  
*jwmcbride@sidley.com*  
*david.greenfield@sidley.com*  
*wbaumgartner@sidley.com*  
*dgiardina@sidley.com*  
*cphillips@sidley.com*  
*ctrela@sidley.com*  
*erobbins@sidley.com*  
*nlove@sidley.com*

T. Andrew Culbert, Esq.  
David E. Killough, Esq.  
Microsoft Corp.  
*andycu@microsoft.com*  
*davkill@microsoft.com*

DATED this 4th day of October, 2012.

/s/ Marcia A. Ripley

Marcia A. Ripley